

DIRECT TESTIMONY

of

DAVID A. BORDEN

Energy Division

Illinois Commerce Commission

Application for Reorganization

Central Illinois Light Company
Ameren Corporation

Docket No. 02-0428

October 18, 2002

1 **Q. Please state your name and business address.**

2 A. My name is David A. Borden. My business address is 527 East Capitol Avenue,
3 Springfield, Illinois, 62701.

4 **Q. Please state your qualifications and education background.**

5 A. In 1986, I graduated from the University of Texas at Austin with a Bachelor of
6 Arts degree in Economics. In 1989, I graduated from Texas A&M University,
7 College Station, Texas with a Master of Science degree in Economics. I have
8 been employed by the Illinois Commerce Commission ("Commission") since
9 June, 1990.

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11 I began work for the Commission as an Economic Analyst II in the Rate Design
12 Department of the Public Utilities Division. In December 1992, I was hired as an
13 Economic Analyst III by the Water and Sewer Program of the Office of Policy and
14 Planning. In September 1996, I transferred to the Energy Program of the Office
15 of Policy and Planning as an Economic Analyst III. In January 1998, I was hired
16 as an Executive Assistant to Commissioner Richard Kolhauser. I provided policy
17 and technical analysis for Commissioner Kolhauser on all energy,
18 water/wastewater and transportation matters before the Commission.

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20 In January 2000, I was hired as an Economic Analyst IV by the Energy Division.
21 I have previously testified on behalf of Staff in numerous dockets concerning
22 energy and water/wastewater issues.

23 **Q. What is the purpose of your direct testimony?**

24 A. The **purpose** of my direct testimony is to respond to the Supplemental Direct
25 Testimony and exhibits of Ameren Corporation (“Ameren”), Central Illinois Light
26 Company (“CILCO”) referred to jointly as (“Applicants”). Specifically, I address
27 issues related to CILCO becoming an Integrated Distribution Company (“IDC”),
28 pursuant to the provisions of HB 5851 that was signed in to law in August 2002,
29 and as set forth in Condition I, of Applicants’ Ex. 10.1, p. 8.

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31 **Q. Please explain Condition I. (Applicants’ Ex. 10.1, p. 8)**

32 A. Applicants’ have agreed that within one year of closing the Acquisition,
33 AmerenCILCO will file a petition with the ICC requesting authority to operate as
34 an IDC, pursuant to Section 16-119A of the Illinois Public Utilities Act (the “PUA”
35 or the “Act”).

36

37 **Q. Why should AmerenCILCO become an IDC as a result of this acquisition?**

38 A. AmerenCILCO should become and IDC in order to comply with the Commission
39 rules and to promote competition. I will first explain how becoming an IDC
40 complies with existing Commission rules.

41

42 83 Ill. Adm. Code 452 (“Part 452”) implements Section 16-199A of the Act
43 regarding functional separation of electric utilities and standards of conduct. Part
44 452 sets forth two options for an electric utility to select from to comply with these
45 requirements. The two options are Part 452, Subpart A: Functionally Separated

Utility ("FSU") Rules, or Part 452, Subpart B: Integrated Distribution Company Rules. Part 452 Subpart A and Part 452 Subpart B each require that electric utilities make their initial choice and file their implementation plans before May 31, 2002. (Section 452.170(a) & Section 452.220(b)) CILCO chose to file as an FSU under Part 452 Subpart A and was thus precluded from becoming an IDC because Part 452 contains no provision for an FSU to later petition the Commission to become an IDC. CILCO's FSU plan is currently under investigation (Docket No. 02-0391). In short, CILCO is currently not in compliance with Part 452.

Q. How can AmerenCILCO become an IDC as a result of the Acquisition when the statutory filing date has passed?

A. It is my understanding that the Governor signed HB 5851, in August 2002, that addresses this issue. HB 5851, as it amends Section 16-119A of the Act, provides that an electric utility may have up to one year after the conclusion of the sale, purchase or any other transfer described in the law to file a revised plan to implement, Part 452 Subpart B: Integrated Distribution Company Rules. Thus, the Commission should approve Condition I to ensure that AmerenCILCO complies with Part 452. In keeping with the legal parlance of Section 7-204 of the Act, approval of Condition I ensures that AmerenCILCO will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. (Section 7-204(b)(5))

Q. Why do you believe that requiring AmerenCILCO to become an IDC promotes competition?

A. Section 452.230(b) expressly prohibits an IDC from providing non-tariffed retail electric supply service. This prohibition applies to services under Sections 16-102, 16-106, 16-116(b), and 9-102.1 of the Act. Non-tariff retail supply services, contract services, billing and pricing experiments, etc. can be used by a utility to inhibit entry in to the retail market by alternative suppliers in a manner that harms the development of retail competition. Part 452, Subpart A allows an FSU to continue to offer and provide non-tariff retail supply services and those services included under Sections 16-102, 16-106, 16-111(b), and 9-201.1 of the Act. In my opinion, the FSU rules may not be as effective as the IDC rules at preventing anti-competitive behavior because the FSU rules rely, in part, on a variety of Chinese walls to separate functions within the utility that may be inadequate in addressing the conflict of interest between delivery and retail supply functions existing within the same company (when compared to physical divestiture or legal prohibitions against specific retail supply activities.) In addition, the IDC rules are somewhat clearer in what they preclude and thus may result in less harm to the development of competition.

Q. Does this conclude your direct testimony?

A. Yes, it does.